INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Argument	7
Conclusion	10

CITATIONS

Cases:

Dickey v. *National Labor Relations Board*, 217 F. 2d 652 8

National Labor Relations Board v. *Pittsburgh Steamship Co.*, 340 U. S. 498 8

Union Carbide and Carbon Corp. v. *National Labor Relations Board*, decided May 14, 1957 (40 L. R. R. M. 2084) 8

Statute:

National Labor Relations Act, Section 9 (a), as amended (61 Stat. 143, 29 U. S. C. 159) 2

47283—57

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 964

CARPINTERIA LEMON ASSOCIATION, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below in the five cases involved herein (Pet. App. B, 3–13) is reported at 240 F. 2d 554. The findings of fact, conclusions of law, and order of the National Labor Relations Board in each case are reported at 112 NLRB 93, 109, 115, 121, 130, respectively.[1]

[1] The five cases were separate proceedings before the Board. All five were thereafter consolidated for argument before the court below which issued a single opinion disposing of the cases.

JURISDICTION

The judgments of the court below were entered on February 13, 1957 (Pet. App. B, 14–35). The petition for certiorari was filed on May 2, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254. See also Section 10 (e) of the National Labor Relations Act, as amended, 29 U. S. C. 160 (e).

QUESTION PRESENTED

Whether substantial evidence on the record as a whole supports the Board's finding that a union, which was originally chartered directly by the CIO and had been certified by the Board as the bargaining representative of petitioners' employees, continued to be substantially the same organization with only a change in name and affiliation following its affiliation with an international union of the CIO.

STATUTE INVOLVED

Section 9 (a) of the National Labor Relations Act, as amended (61 Stat. 143, 29 U. S. C. 159), provides in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *.

STATEMENT

1. *Proceedings before the Board.*—In November 1953, following a Board-conducted election held pur-

suant to consent agreements, the United Fresh Fruit & Vegetable Workers Union, L. I. U. No. 78, CIO (hereafter called the Union), was certified as the collective bargaining representative of the employees of each of the five Associations involved herein (R. 73; 6–8).[4] Shortly thereafter the Union and the Associations entered into negotiations for collective bargaining agreements (R. 73; 140, 190). Early in 1954, the Associations broke off negotiations (R. 74; 39–40, 143, 194, 198) and thereafter the Union filed unfair labor practice charges against each of the Associations alleging, among other things, unlawful refusals to bargain, in violation of Section 8 (a) (5) and (1) of the Act (R. 8–9).

Throughout the events described above, the Union was chartered directly by the CIO as a local without affiliation with any of the CIO's international unions (R. 47; 199). During this period, however, a committee on jurisdiction within the CIO had recommended that the Union affiliate with the United Packinghouse Workers of America, an international union holding membership in the CIO, which appeared to assert jurisdiction over the same groups of employees as those who belonged to the Union (R. 77; 199–200, 231). Acting upon this proposal, the Union and the

[4] Although separate hearings were held with respect to each of the five employers involved here, the facts pertinent to the question presented by the petition are fully developed in the *Santa Clara Lemon Association* case; these facts are substantially the same as those adduced in the other proceedings. Accordingly, unless otherwise indicated, the record references will be to the record in *Santa Clara* which is identified as Vol. V of the Transcript of Record filed in this Court.

Packinghouse Workers met in the spring of 1954 to discuss the matter, and decided to refer the question to the membership of the Union (*ibid.*). As a result, membership meetings of the Union were held throughout the area where it operated for the purpose of presenting, discussing and voting on the question of affiliating with the Packinghouse Workers (R. 77; 201, 321–232). Such a meeting was held in March 1954, in Oxnard, where about 150 members from the various citrus packing houses in the area, including the five Associations here involved, voted unanimously, following discussion, to accept the proposed affiliation (R. 88; 202–203, 231). The vote for affiliation was also "overwhelmingly" carried in the other meetings which where held, and in consequence the Union turned in its charter to the CIO, which canceled it; on July 1, 1954, a new charter was issued the Union by the Packinghouse Workers under the name "United Packinghouse Workers of America, Local 78, CIO" (R. 88, 228–229).

The officers of the Union at the time of its affiliation with the Packinghouse Workers continued in positions of authority thereafter (R. 227, 230, 238). DeShetler, CIO Regional Director for Region 13, testified that "the officers [were] still the same" at the time of the hearing "with the exception of the Administrator" whose "authority" was confined to "financial matters" (R. 230, 227, 235). Prior to the affiliation the Administrator was appointed by the CIO and thereafter by the Packinghouse Workers (R. 230). The Union, however, continued without interruption the same operations and administered the same collective bargaining contracts as before (R. 230, 235, 237–

238). Thus, one Union official testified at the hearing that all of the existing contracts were "accepted by all managements," with "the name * * * [of the Union] just * * * substituted" (R. 237).

On September 7, 1954, the newly chartered Union filed a motion with the Board's regional director, who had conducted the consent elections and had thereafter certified the Union as the bargaining representative of the Associations' employees (*supra*, p. 5), to amend the certification to reflect the change of affiliation (R. 33–34).[3] The regional director issued an order to show cause with respect to the motion, which was served on the Associations, and the latter filed oppositions thereto, alleging that the motion was an attempt "to substitute a new, different and non-certified union in the place and stead of the * * * only union elected by secret ballot" (R. 35–37). Thereafter, on September 21, 1954, the regional director granted the Union's motion and amended the certification to reflect the Union's change in affiliation (R. 88; 42–43).[4]

2. *The Board's decisions and orders.*—On the Union's charges the Board found that the Associations, among other things, had unlawfully refused to bar-

[3] The consent election agreements between the Associations and the Union, provided, *inter alia*, "that [the regional director's] rulings or determinations in respect of any amendment of any certification resulting [from the election] shall also be final" (R. 1).

[4] The order granting the motion specifically stated that the amendment of the certification "is not to be construed as a recertification" (R. 43). Thus, the amended certification, as the original one, ran in favor of the 18,000 member local originally certified under its previous name and not the 150,000 member Packinghouse International.

gain with the Union, in violation of Section 8 (a) (5) and (1) of the Act. To remedy those violations, the Board's order in each case requires the Association to bargain collectively with the Union, under its new name acquired upon affiliation with the Packinghouse Workers of America (R. 88–89). The Board rejected petitioners' contention that the Union after affiliation became a "new and different organization" with which it could not be required to bargain, and that the regional director had erred in amending the certification (R. 87–88; 77; *Carpinteria* record (Vol. I), pp. 63–65, 74). Upon the facts summarized (*supra*, pp. 3–5, the Board found that the union originally certified as the employees' bargaining representative remained substantially the same following its affiliation and that nothing more happened than a change of affiliation and name (*ibid.*). Accordingly, noting that the consent election agreement authorized the regional director to make amendments to certifications (*supra*, p. 5, n. 3), the Board concluded (R. 88), that the "Regional Director did not act arbitrarily or capriciously in the circumstances."

3. *The decision of the court below.*—The court below, with Judge Fee dissenting, in each case affirmed the Board's finding and enforced the order in full. Rejecting petitioners' contention that the regional director's action in amending the certification of the Union was "unlawful because the Packinghouse local is a new and different union from the Fruit and Vegetable Union originally chosen as bargaining agent," the court below stated (Pet. App. B, 5–6):

"The right of a successor union to assume the status of certified bargaining agent held by its predecessor depends on a factual issue—is the new union a continuation of the old union under a new name or affiliation or is it a substantially different organization? * * *

Although the Packinghouse Workers sent in a new financial administrator to replace the one previously furnished by the national CIO, the officers remained the same. There was no dilution of membership as a result of the change. Contracts concluded by the Fruit and Vegetable Union remained in effect except for the substitution of the union's new name. This testimony was not contradicted.

The Board adopted the Trial Examiner's finding that there was merely a change of name and affiliation. From our consideration of the record as a whole, we find that this determination is supported by substantial evidence.

ARGUMENT

The holding of the court below that the Union, after affiliation with the Packinghouse Workers, was a "continuation of the old union" and not "a substantially different organization" (Pet. App. B, 5–6), rests entirely upon the Board's factual finding, sustained by the court below, that "there was merely a change of name and affiliation" (*ibid.*). That finding, as the record summarized *supra*, pp. 3–5, shows, is adequately supported. The nub of petitioners' case here is that the Board and court below, in so concluding, "ignored or overlooked * * * other undisputed facts" which assertedly establish that more than a change of name and affiliation occurred (Pet.

10, 11). This challenge to the substantiality of the evidence supporting the Board's finding presents no question warranting further review by the Court. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U. S. 498, 502–503.

Nor is the instant case in conflict with *Dickey* v. *National Labor Relations Board*, 217 F. 2d 652 (C. A. 6), relied on by petitioners and the dissenting judge in the court below. The different results in the two cases rest, not upon disagreement over principle, but rather upon the particular facts of each case. In *Dickey*, the Sixth Circuit concluded, on the record in that case, that the new organization resulting from the amalgamation or merger of the original union with another labor organization was in a substantial sense "a union different from the one actually chosen by the men and certified." 217 F. 2d at 654. That is not the case here. Cf. *Union Carbide and Carbon Corp.* v. *National Labor Relations Board*, decided May 14, 1957 (40 L. R. R. M. 2084) where the Sixth Circuit distinguished its earlier decision in *Dickey* and concluded that the merger of the certified union with another labor organization did not impair the union's status as bargaining agent of the employees involved. The court wrote (40 L. R. R. M. at 2085):

> We cannot agree with petitioner's contention that the Board acted arbitrarily and capri-

ciously in substituting the [Oil, Chemical, and Atomic Workers International Union, AFL-CIO] for the [United Gas, Coke and Chemical Workers of America, CIO]. The findings of the Board are amply supported by the evidence. Nor do we consider that *Dickey* v. *N. L. R. B.*, 217 F. (2d) 652 (C. A. 6, 1954) compels a different conclusion. Our holding there is distinguishable on several grounds. In the *Dickey* case, the court found that the merger resulted in a different organization from that originally certified. There, the members of the certified unit constituted only a fraction of the merged group and had no control over it.

In the instant case, there were no changes in the membership or officers of the local, or in its day-to-day relationships with the company. The Gas Workers were of comparable size with the Oil Workers and had an equal voice in deliberations and in the division of officers. In short, the consolidated group was intended to function as a continuation of its two constituent unions, so that the consolidation would not impair any of their certifications. For these reasons, our decision in the *Dickey* case is not controlling here.

It is apparent, therefore, that the decision of the court below is not in conflict with the holdings of the Sixth Circuit.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JEROME D. FENTON,
General Counsel,
STEPHEN LEONARD,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
SAMUEL M. SINGER,
Attorney,
National Labor Relations Board.

MAY 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957